

15.11.2022

Present: Sh. Yashvir Gahlot, Ld. Counsel for plaintiff.
Sh. Ram Lal, Ld. Counsel for defendant no. 1
along with defendant no. 1.
Sh. Rajeev Kumar Upadhyay, Ld. Counsel for
defendant no. 2.

Matter was fixed for arguments on the application under Order VII R 11 of CPC. I have heard the parties and gone through the record. The only ground given in the application under Order VII R 11 of CPC is that the defendant no. 1 had not taken any loan from the plaintiff and the amount of Rs. 5.50 lakhs received by the defendant no. 1 was transferred by the plaintiff in the account of defendant no. 1 on behalf of defendant no. 2 in pursuance of a settlement dated 15.02.2019. I find that the above is not a ground that falls under Order VII R 11 of CPC but is rather in the nature of a defence taken by the defendant no. 1. For the Court to reject the plaint under Order VII R 11 of CPC, only the plaint is to be seen as a whole. In the present case, the plaintiff has clearly averred that he paid Rs. 5.50 lakhs in the account of defendant no. 1 (reference can be had to para 10 of the plaint) through two cheques which were encashed by the defendant no. 1. Whether or not there was any legal liability of the defendant no. 1 towards the plaintiff, is a matter of trial. **Therefore, the application under Order VII R 11 of CPC is hereby dismissed.**

An application under Order XIV R 5 (1) of CPC was filed on behalf of defendant no. 2 for framing an additional issue on the point of territorial jurisdiction. It has been submitted that no part of the cause of action arose within the jurisdiction of this Court. As per para 22 of the plaint, the plaintiff has claimed that the payment

was made to defendant no. 1 from the bank of the plaintiff situated at Dwarka and hence, has claimed that part of the cause of action arose within the jurisdiction of this Court. After perusal of the record, I find that the question of territorial jurisdiction in the present case seems to be a mixed question of facts and law and therefore, there is no impediment to the additional issue being framed in this regard. Therefore, the following additional issue is hereby framed:

“(iii) Whether this Court has territorial jurisdiction to try the present suit? (OPD-2)”

On a further perusal of the pleadings, I find that one more additional issue arises from a perusal of the WS of the defendant no. 1. Therefore, the following additional issue is also framed:

“(iv) Whether the amount of Rs. 5.50 lakhs was paid by plaintiff to defendant no. 1 to settle the liability of defendant no. 2 towards the defendant no. 1 and not as a loan? (OPD-1)”

Let the parties file the list of witnesses within 15 days from today. I deem it fit that in the present case, defendant no.1 and 2 should lead evidence before the plaintiff. Therefore, defendant no. 1 is directed to lead evidence on the next date of hearing by filing of affidavit of witnesses in accordance with the list of witnesses within three weeks along with advance copy to the opposite party.

Put up for defendant's evidence on **23.01.2023**.

**(DIVYANG THAKUR)
ADJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
15.11.2022 (A)**